


# Washington State Taxes

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House Finance Committee

January 12, 2023





# Constitutional & Legal Considerations

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- Property Tax vs Excise Tax

- Federal Constitution

  - Due Process Clause

  - Dormant Commerce Clause

  - Equal Protection Clause

- Washington State Constitution

  - Uniformity

  - 1% Constitutional Limit

  - Exemptions

  - Gift of Public Funds





# Property Tax or Excise Tax?

- ⚖️ A **property tax** is imposed on the ongoing enjoyment of the property and is levied annually. Moreover, a tax on property is considered absolute and unavoidable. The rate of the property tax paid by a taxpayer is assessed based on a valuation of the property.
- ⚖️ The obligation to pay an **excise tax** is based upon the voluntary action of the person being tax in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise tax, and the element of absolute and unavoidable demand, as in the case of a property tax, is lacking.



# Due Process Clause

⚖ U.S. Const. amend XIV, §. 1.

⚖ “Due process” requires “minimal contacts” between the taxing state and the taxpayer; it is concerned with the fundamental fairness of governmental activity. . . and is often identified as ‘notice’ or ‘fair warning.’”



# Dormant Commerce Clause

## ⚖ The Commerce Clause:

⚖ US Const. Article I, § 8, cl. 3, grants Congress the authority to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes. . . .”

## ⚖ Dormant Commerce Clause

⚖ Prohibits states from taking actions that impact the flow of commerce across state borders.

⚖ Discriminating against interstate commerce

⚖ Facial discrimination

⚖ Discriminatory effect

⚖ Discriminatory purpose



# Equal Protection Clause

⚖ U.S. Const. amend XIV:

⚖ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



# Washington State Constitution

## ⚖ Article 7, Section 1




- ⚖ “All taxes shall be **uniform** upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only.”
- ⚖ “The word “**property**” as used herein shall mean everything, whether tangible or intangible, subject to ownership.”
- ⚖ “**All real estate** shall constitute one class . . .”





# Constitutional Exemptions


## Article VII, Section 1:

-  Such property as the legislature may by general laws provide shall be exempt from taxation.
-  Property of the United States and of the state, counties, school districts and other municipal corporations . . . shall be exempt from taxation.
-  The legislature shall have power, by appropriate legislation, to exempt personal property to the amount of fifteen thousand (\$15,000) dollars for each head of family liable to assessment and taxation under the laws of this state of which the individual is the actual bona fide owner.




# Constitutional Exemptions (cont.)

## Article VII, Section 10:

-  The legislature shall have the power, by appropriate legislation, to grant to retired property owners relief from the property tax on the real property occupied as a residence by those owners.

## Article VII, Section 11:

-  Current use for farms, agricultural lands, standing timber and timberlands and other open spaces used for recreation or for enjoyment of their scenic or natural beauty.



# Other Constitutional Issues

## Constraints on tax revenues

-  Must be deposited in state treasury. (Article VII, Section 6)
-  Must be appropriated (Article VIII, Section 4)



# Power to Tax

## ⌄ Legislature

- ⌄ Article II, Section 1: “The legislative authority of the state of Washington shall be vested in the legislature...” (minus the power of initiative and referendum reserved by the people)
- ⌄ Article VII, Section 1: The power of taxation shall never be suspended, surrendered or contracted away.

## ⌄ Local Government

- ⌄ Article XI, Section 12: “The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes.
- ⌄ Article VII, Section 9: The legislature may vest local governments with power to make local improvements by special assessment, or by special taxation of property benefited.



# Gift of Public Funds/Lending of Credit

## Article VIII, Section 5:

“The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.”

## Article VIII, Section 7

No county, city, town, or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor or infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation.”


Except port districts (Article VIII, Section 8): using public funds for industrial development, trade promotion or promotional hosting is considered public use for a public purpose and is not considered a gift.





# Commutation Clause


## Article XI, Section 9

 “No county, nor its inhabitants, nor the property in any county shall be released, discharged or commuted from their proportionate share of the tax burden imposed by the state...”



# Limits on Levies

## Article VII, Sec. 2

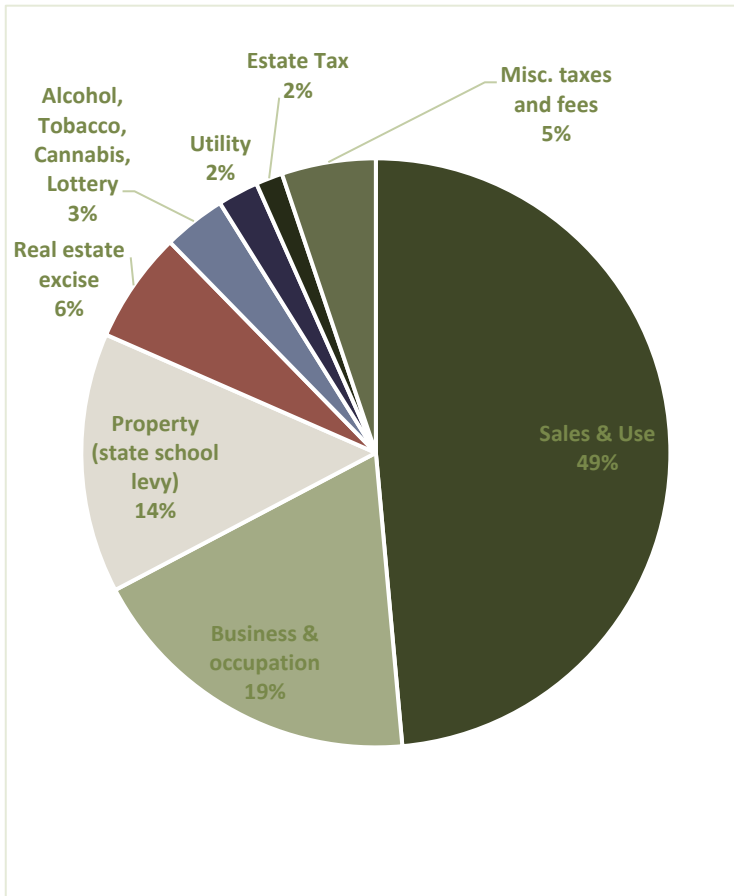
 “The aggregate of all tax levies on real and personal property by the state and all taxing districts...shall not in any year exceed one percent of the true and fair value of such property in money.”





# Washington's Tax System

# Near General Fund State Revenue 2021-23 Biennium



2021-23 NGF-S Forecasted Revenue by Source*	
Source	Dollars in Millions
Sales & Use	30,636
Business & occupation	11,812
Property (state school levy)	9,007
Real estate excise	3,857
Alcohol, Tobacco, Cannabis, Lottery	2,167
Utility	1,412
Estate Tax	931
Misc. taxes and fees	3,260
<b>Total</b>	<b>63,082</b>

\*Includes General Fund- State, Education Legacy Trust Account, and Opportunity Pathways Account

\*Based off the November 2022 Forecast







# Retail Sales & Use Taxes



# Retail Sales and Use Taxes

- ▮ **49% of 2021-23 near general fund state revenue**

- ▮ **Applies to:**

- ▮ Retail sales and uses of goods and some services

- ▮ **Taxpayers:**

- ▮ All individuals and businesses that make a retail sales and/or use transaction, unless otherwise exempt

- ▮ **State Rate:** 6.5% of selling price

- ▮ Total state and local rate varies from 7.0 to 10.4%

- ▮ Average combined rate is 9.3%

- ▮ **Local Rates:** Vary, average local rate 2.8%

- ▮ Local jurisdictions have the authority to levy optional sales and use taxes, with council or voter approval

- ▮ Rates can be in addition to state rate or credited against state rate

- ▮ Examples: Ocean Park 1.6%, Ruby 1.9%, Olympia 3.0%, Seattle 3.75%



# Retail Sales and Use Taxes

## Exempted goods and services:

-  193 exemptions in state law

-  Exemptions include:

-  food

-  prescription drugs

-  manufacturing machinery and equipment

## Collection:

-  Sales taxes are collected at the point of sale by the retailer

-  Use taxes are remitted upon use by the consumer

## Distribution:

-  Most state sales and use revenue deposited into the State General Fund with few exceptions



-  Local sales and use revenue remains with the taxing authority





# Retail Sales and Use Taxes

## Deferral, Exemption, and Credit Programs


### Food Manufacturing

-  Deferral or credit for businesses
-  For certain food manufacturing, warehousing, and research and development

### Server Equipment and Power Infrastructure

-  Deferral/Exemption for owners and tenants of eligible data centers
-  For purchases of server equipment, power infrastructure, and labor

### Working Families Tax Credit

-  For qualifying low-to-moderate income residents
-  Credit for a portion of sales taxes beginning in 2023





# Property Taxes

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Office of Program Research

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# State Property Tax

## **14% of 2021-23 near general fund state revenue**

-  Oldest state tax – enacted at statehood
-  Dedicated to funding public schools

## **Applies to:** Assessed value (AV) of real and personal property

-  Real property includes land, improvements to land, structures, and certain equipment affixed to structures
-  Most personal property owned by individuals is exempt (unless used in a business)

## **Taxpayers:** All property owners, unless otherwise exempt

## **Exemptions**

-  Many exemptions in state law
-  Exemptions include government property, property of some nonprofit organizations, low-income seniors' residences (partial exemption), household goods, business inventories, intangible property (money, mortgages, stocks, etc.), etc.







# Appraisal Methods


## Market or sales comparison approach

 Estimated based on multiple sales of similar properties. Most residential property is valued using this method.

## Cost approach to value

 Based on the cost of replacing an existing structure with a similar one that serves the same purpose. This method is commonly used to value new construction.

## Income approach to value

 Based on the income producing potential of the property. This method is used primarily to value business property.





# How are property taxes determined?

⌚ Budget based system with 3 main components:

- ⌚ Levy amount
- ⌚ Assessed Value (AV)
- ⌚ Levy Rate

⌚ Property tax formula:

$$\text{Levy Amount} \div \text{AV (in 000s)} = \text{Levy Rate (per \$1,000 AV)}$$

⌚ Example – City of House Hearing Room A:

- ⌚ Levy (budget) of \$1,000,000
- ⌚ AV in the district of \$1,000,000,000
- ⌚ Results in a Levy Rate of \$1.00 per \$1,000 AV
- ⌚ If you owned a home worth \$200,000, you'd pay \$200 in PT






# Limits to Property Taxation (a non-exhaustive list)

- ⌄ Constitutional 1% limit (\$10 limit)
- ⌄ State statutory maximum rate
- ⌄ 1% Revenue Growth Limit
- ⌄ \$5.90 local government limit



# Limits to Property Taxation

## Constitutional 1% limit (\$10 limit)

-  Washington State's Constitution limits the regular (non-voted) combined property tax rate that applies to an individual's property to one percent of market value (\$10 per \$1,000).
-  Voter approved special/excess levies, such as special levies for schools, are in addition to this amount
-  Port and public utility districts are exempt from this limit

 State statutory maximum rate is \$3.60





# 1% Revenue Growth Limit

- Annual regular property tax revenue growth is capped at 1% (plus new construction, state assessed property, etc.)
- Applies to state and local regular levies
- This is *not* a limit to growth in assessed value
- Example – the City of HHRA:
  - Levied \$1 million in property taxes in Year Zero
  - Is limited in Year One to levying \$1.01 million (a 1% growth)







# 1% Revenue Growth Limit over time

Example – the City of HHRA:

Year	Total levy	Assessed Value	Rate (per 000 in AV)
Year Zero	\$1,000,000	\$1 billion	\$1.00
Year One	\$1,010,000	\$1.15 billion	\$0.88
Year Two	\$1,020,100	\$1.265 billion	\$0.81



# 1% Revenue Growth Limit over time

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	Year Zero AV	Tax Due	Year One AV	Tax Due	Year Two AV	Tax Due
Home A	\$200,000	\$200	\$220,000	\$193	\$220,000	\$177
Home B	\$200,000	\$200	\$240,000	\$211	\$240,000	\$194
Home C	\$200,000	\$200	\$230,000	\$202	\$230,000	\$185



## **\$5.90 local limit**

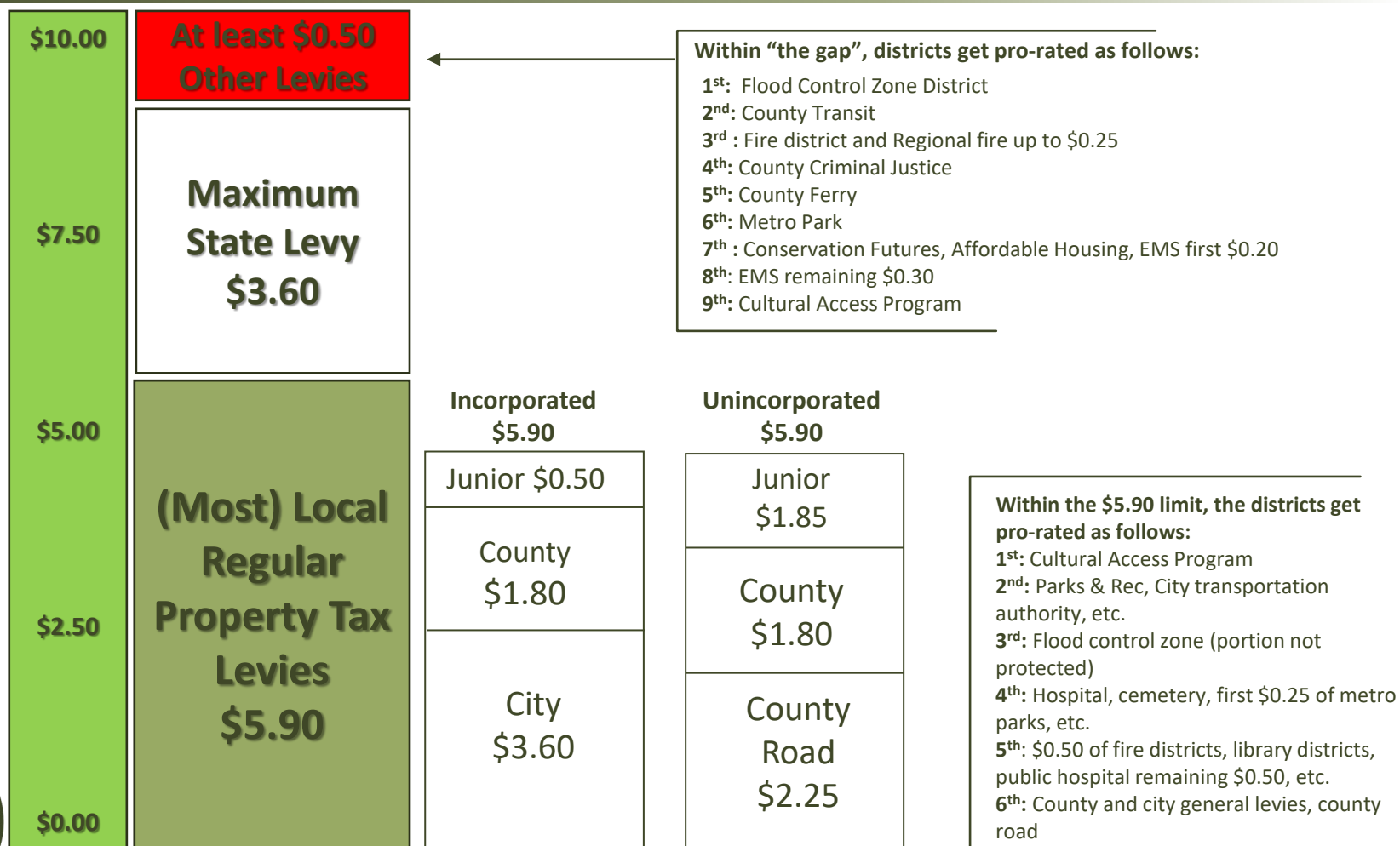
- ⌘ The aggregate (total) regular levy rate for most local governments combined – including “senior taxing districts” such as cities and counties, as well as “junior taxing districts” such as fire districts and park districts – may not exceed \$5.90 per \$1,000 AV
- ⌘ Exemptions (subject to the \$10 limit but not the \$5.90 limit):
  - ⌘ Affordable housing levies
  - ⌘ County conservation futures levies
  - ⌘ County criminal justice levies
  - ⌘ County ferry district levies
  - ⌘ Emergency medical services (EMS) levies
  - ⌘ Up to \$0.25 of a fire district or regional fire authority levy, if protected from prorationing by the legislative body
  - ⌘ Regional transit authority levies (Sound Transit)



# Constitutional 1% Limit: Regular Levy Tax Rate Allocation

Rates in \$ per thousand. Excludes excess levies such as local school levies.

## State and Local Regular Property Taxes



# **Property Tax Exemption for Senior Citizens and People with Disabilities**

# Property Tax Exemption for Senior Citizens and People with Disabilities

☞ Qualification #1: age or disability

☞ Must be any of the following:

☞ At least 61 years of age.

☞ At least 57 years of age and the surviving spouse or domestic partner of a person who was an exemption participant at the time of their death.

☞ Unable to work because of a disability.

☞ A disabled veteran with a service-connected evaluation of at least 80% or receiving compensation from the United States Department of Veterans Affairs at the 100% rate for a service-connected disability.







# Property Tax Exemption for Senior Citizens and People with Disabilities



## Qualification #2: Ownership

-  Must own the home by December 31 of the assessment year

## Qualification #3: Occupancy

-  Must occupy the home for more than 6 months in the assessment year

## Qualification #4: Income

-  Combined disposable income of Income Threshold 3 or less (based off county median household income)
-  Income thresholds – vary by county, and are adjusted every 5 years (next adjustment in 2024)





# Property Tax Exemption for Senior Citizens and People with Disabilities

What is exempt? Three levels of exemption, based on qualifying income level

Level 1 is exempt from:	Level 2 is exempt from:	Level 3 is exempt from:
Excess levies	Excess levies	Excess levies
Part II of the state school levy	Part II of the state school levy	Part II of the state school levy
Regular levies on the greater of \$60,000 or 60% of AV	Regular levies on the greater of \$50,000 or 35%, (limit of \$70,000 of AV)	





# Business & Occupation Taxes

# State Business and Occupation Taxes

19% of 2021-23 near general fund state revenue

Applies to:

Business gross receipts

Taxpayers:

Approximately 365K businesses report B&O taxes each year

Exception: non-retailing businesses with incomes <\$28,000/year

Ten tax rates

Rate depends on business activity, some classifications have preferential rates

Range from 0.138% to 3.3%

Main rates:

Retailing: .471%

Wholesaling: .484%

Manufacturing: .484%

Service & other activities (under \$1M): 1.5%

Service & other activities (over \$1M): 1.75%

Workforce Education Funding



# State Business and Occupation Taxes

## ☰ Credits (30+):

- ☰ Rural County B&O Credit for New Employees
- ☰ High Technology B&O Tax Credit
- ☰ Small Business B&O Tax Credit
- ☰ Multiple Activities Tax Credit (MATC)
- ☰ Credit for Hiring Unemployed Veterans

## ☰ Exemptions:

- ☰ 190 exemptions in state law
- ☰ Exemptions include some agriculture activity, investment income, rental of real estate, qualifying small businesses

## ☰ Collection: Department of Revenue

## ☰ Distribution:

- ☰ Deposited in the general fund
- ☰ Exception: workforce education investment account







# Local Business and Occupation Taxes

Any town or city may levy a local business and occupation tax in addition to the state tax

## Eligible Taxpayers:

-  Entities conducting business within the town or city's jurisdiction
-  49 cities and towns currently levy a local tax

## Rates

-  Rate depends on business activity
  -  Manufacturing
  -  Retail
  -  Services
  -  Wholesale
-  Ranges from .045 to 0.4%





The background of the slide is a black and white photograph of several large, classical columns of a building. A semi-transparent green rectangular overlay is centered over the image, providing a background for the title text.

# Other Taxes

# Real Estate Excise Tax

- ☰ Approximately 6% of 2021-23 near general fund state revenue
- ☰ Applies to the selling price of real property and is typically paid by the seller
- ☰ New graduated rate structure went into effect January 1, 2020.
- ☰ The legislation provided for adjustments to the selling thresholds for the graduated rate based on the CPI for shelter for the most recent 3-year period. The first threshold adjustment will be 10.88%.

Sale Price Threshold January 1, 2020 through December 31, 2022	Sale Price Threshold Beginning January 1, 2023	Tax Rate
\$500,000 or less	\$525,000 or less	1.10%
\$500,000.01 - \$1,500,000	\$525,000.01 - \$1,525,000	1.28%
\$1,500,000.01 - \$3,000,000	\$1,525,000.01 - \$3,025,000	2.75%
\$3,000,000.01 or more	\$3,025,000.01 or more	3%



# Real Estate Excise Tax - Exemptions

- There are limited exemptions to REET, including:
  - Gifts
  - Inheritance or devise
  - Community property, dissolution of marriage or domestic partnership, legal separation
  - Affordable housing (RCW82.45.010(3)(v)(i))



# Real Estate Excise Tax - Revenue Distribution

## Until June 30, 2023

- General Fund-State (79.4%)
- Public Works Assistance Account (1.7%)
- City-County Assistance Account (1.4%)
- Education Legacy Trust Account (27.5%)

From January 1, 2020 through June 30, 2023, 1.3% of state REET collected by counties is retained to cover administrative costs

## Beginning July 1, 2023

- General Fund-State (79.4%)
- Public Works Assistance Account (5.2%)
- City-County Assistance Account (1.4%)
- Education Legacy Trust Account (24%)








# Capital Gains Tax

- Enacted in 2021, ESSB 5096 (Chapter 82.87 RCW) created a 7% tax on the sale or exchange of long-term capital assets such as stocks, bonds, business interests, and other investments and tangible assets.
- Applies to an individual domiciled in Washington at time of sale for intangibles.
- Applies to sale of tangible personal property if the property is located in Washington at time of sale.
- Took effect January 1, 2022.



# Capital Gains Tax

## Deductions and Exemptions include:

-  Standard deduction of first \$250,000.
-  Charitable deduction up to \$100,000 for donations each year in excess of \$250,000.
-  Sale of qualified family-owned small business deduction
-  Sale of real estate exemption
-  Retirement savings account exemption





# Capital Gains - Fiscal Impact

☰ Approximately 7,000 taxpayers for CY 23

☰ Revenues distribution by FY

☰ First \$500M per FY in ELTA

☰ Remainder in Common School Construction Account

☰ Revenue Forecast

Capital Gains Tax Revenue Estimates (All State Accounts)				
	2021-23	2023-25	2025-27	2027-29
Total (millions of dollars)	\$243	\$1,147	\$1,593	\$1,866



# Capital Gains - Court Challenge

- ⚖️ Superior Court in Douglas County found that the tax did not meet the constitutional requirements for property taxes.
- ⚖️ Last July, Washington Supreme Court accepted direct review of legal challenge.
- ⚖️ In December, Washington Supreme Court issued a stay from enforcing Superior Court judgment
- ⚖️ Oral arguments scheduled for January 26, 2023.
- ⚖️ First returns and CGT payments due April 17, 2023.



# Estate Tax

- ▮ Value of all property located in Washington at decedent's date of death
- ▮ Exclusions for farms and qualified family owned businesses
- ▮ Standard Exclusion/Filing Threshold

Date death occurred	Filing threshold	Applicable exclusion amount
2020	Same as exclusion amount	2,193,000
2019	Same as exclusion amount	2,193,000
2018	Same as exclusion amount	2,193,000
2017	Same as exclusion amount	2,129,000
10/23/16 to 12/31/16	Same as exclusion amount	2,079,000
1/1/16 to 10/22/16	2,000,000	2,079,000
2015	2,000,000	2,054,000
2014	2,000,000	2,012,000
2006 to 2013	2,000,000	2,000,000



# Estate Tax

☞ Estate Tax Revenues deposited into the Education Legacy Trust Account.

☞ Approximately 1.5% of NGF-S in 2021-2023

If Washington taxable estate is at least...	But less than...	The amount of tax equals: Initial tax amount...	Plus tax rate %...	Of Washington taxable estate value greater than...
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	18.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$910,000	19.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,100,000	19.50%	\$7,000,000
\$9,000,000		\$1,490,000	20.00%	\$9,000,000



# Other Taxes & Fees

## ⌄ Cannabis Tax

- ⌄ Approx. 0.5% of 2021-23 near general fund state revenue
- ⌄ Excise tax of 37% levied at the point of retail sale
- ⌄ State and local sales taxes are also collected

## ⌄ Public Utility Tax (PUT)

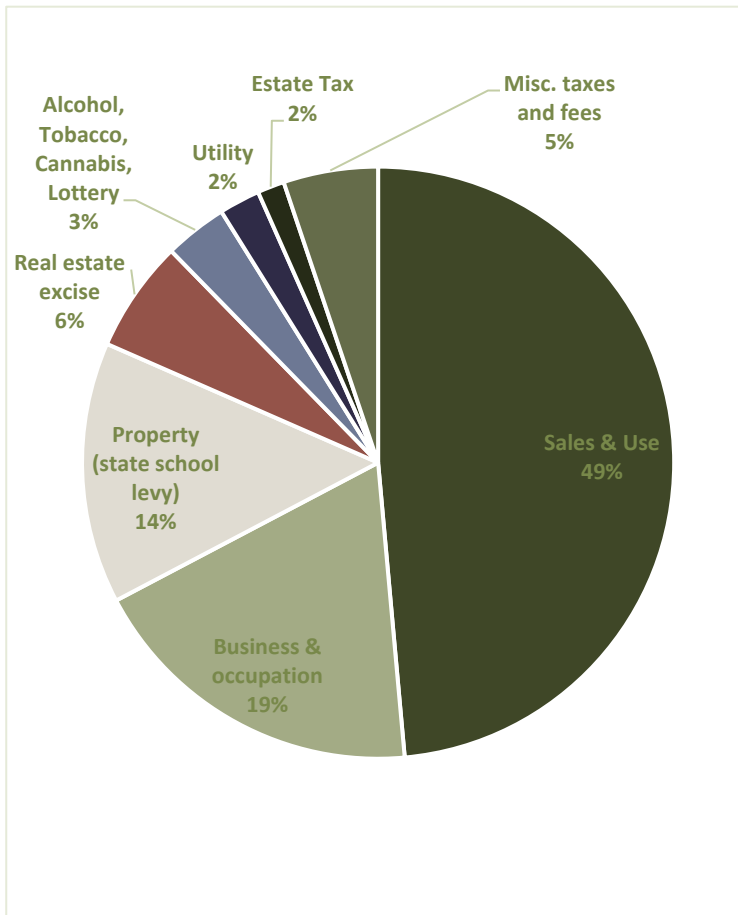
- ⌄ Approx. 2% of 2021-23 near general fund state revenue
- ⌄ Applies to public utilities with gross receipts over \$2,000 monthly
- ⌄ In lieu of B&O tax
- ⌄ Five tax rates ranging from 0.642% to 5.029%

## ⌄ Other Taxes & Fees

- ⌄ Approx. 5% of 2021-23 near general fund state revenue
  - ⌄ Insurance premiums
  - ⌄ Timber excise
  - ⌄ Penalties and interest
  - ⌄ Etc.



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# Tax Preferences

# Tax Preferences - Statutory Requirements

- ☐ All new tax preferences, and some modifications of existing preferences, require a tax preference performance statement and an expiration date (RCW 82.30.805 & 82.30.808)
- ☐ Tax preference performance statement
  - ☐ Includes
    - ☐ Legislative purpose and intent of tax preference
    - ☐ Performance metrics to measure effectiveness of preference in accomplishing its purpose and intent
    - ☐ Data sources with which to quantify the metrics
  - ☐ Joint Legislative Audit and Review Committee (JLARC) conducts evaluation of performance metrics and makes recommendations to the Legislature to continue, clarify, revise, or allow to expire
- ☐ Expiration date
  - ☐ Automatic 10-year expiration, unless an alternative is provided



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# House Finance Committee - Scope



## Issues related to state revenues

-  Creating, extending, expanding, or eliminating state taxes
-  Providing exemptions from state taxes
-  Modifying the administration of state taxes

## Issues related to local government revenues

-  Authorizing new local government tax authority
-  Modifying existing local government tax authority
-  Establishing state-shared revenue programs with local governments

## Some revenue issues do not go to the Finance Committee

-  Transportation-related revenues (fuel taxes)
-  Insurance trust revenue: Unemployment and worker's compensation taxes





**Income Thresholds**  
**For Senior Citizen and Disabled Persons**  
**Property Tax Exemption and Deferral**  
**For Tax Years 2020-2024**

County	Income Threshold 1	Income Threshold 2	Income Threshold 3	Deferral Threshold
Adams	30,000	35,000	40,000	45,000
Asotin	30,000	35,000	40,000	45,000
Benton	30,000	35,610	42,084	48,559
Chelan	30,176	36,882	43,588	50,294
Clallam	30,000	35,000	40,000	45,000
Clark	34,856	42,602	50,348	58,094
Columbia	30,000	35,000	40,000	45,000
Cowlitz	30,000	35,000	40,000	45,000
Douglas	30,000	35,000	40,000	45,000
Ferry	30,000	35,000	40,000	45,000
Franklin	30,681	37,498	44,316	51,134
Garfield	30,000	35,000	40,000	45,000
Grant	30,929	37,802	44,675	51,549
Grays Harbor	30,000	35,000	40,000	45,000
Island	30,000	35,000	40,000	45,000
Jefferson	30,000	35,000	40,000	45,000
King	40,447	49,435	58,423	67,411
Kitsap	33,628	41,101	48,574	56,047
Kittitas	30,000	35,000	40,083	46,250
Klickitat	30,000	35,000	40,000	45,773
Lewis	30,000	35,000	40,000	45,000
Lincoln	30,000	35,000	40,000	45,000
Mason	30,000	35,000	40,000	45,552
Okanogan	30,000	35,000	40,000	45,000
Pacific	30,000	35,000	40,000	45,000
Pend Oreille	30,000	35,000	40,000	45,000
Pierce	31,644	38,676	45,708	52,741
San Juan	30,000	35,000	40,000	45,858
Skagit	30,000	35,869	42,390	48,912
Skamania	30,000	35,000	40,000	45,148
Snohomish	38,591	47,167	55,743	64,318
Spokane	30,000	35,000	40,000	45,000
Stevens	30,000	35,000	40,000	45,000
Thurston	33,623	41,095	48,566	56,038
Wahkiakum	30,000	35,000	40,000	45,000
Walla Walla	30,000	35,000	40,000	45,000
Whatcom	30,000	35,575	42,043	48,511
Whitman	30,000	35,000	40,000	45,000
Yakima	30,000	35,000	40,000	45,000